

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**BARRY RENFOLD COOLEY,**

**Defendant.**

**CASE NO. 8:02CR353**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's motion to reduce his sentence as a result of the recent amendments to the crack cocaine sentencing guidelines (Filing No. 685). Counsel was appointed and made an appearance. (Filing Nos. 687, 689.) The government filed a brief opposing the Defendant's motion. (Filing No. 693.) The probation office has completed a worksheet.

The Defendant was sentenced as a career offender to life imprisonment. (Filing No. 515.) The Eighth Circuit Court of Appeals affirmed Cooley's conviction and sentence (Filing No. 552.) This Court denied Cooley's motion brought under 28 U.S.C. § 2255. (Filing Nos. 643, 644.) This Court denied Cooley's motion for a certificate of appealability. (Filing No. 662.) The Eighth Circuit also denied the application for a certificate of appealability and dismissed Cooley's appeal. (Filing No. 683.) Cooley's motion for a reduction in his sentence due to the recent amendments to the crack cocaine sentencing guidelines followed. (Filing No. 685.)

Cooley seeks a downward adjustment of two levels under the new crack cocaine guidelines. However, the Eighth Circuit has stated that a career offender's base offense level is determined under U.S.S.G. § 4B1.1 and not U.S.S.G. § 2D1.1. The sentencing commission lowered the levels under § 2D1.1(c) and did not amend § 4B1.1. *United*

*States v. Tingle*, 524 F.3d 839, 840 (8<sup>th</sup> Cir.), *cert. denied*, 129 S. Ct. 473 (2008).

Therefore, the crack cocaine amendments have no effect on Cooley's case. *Id.* His motion to reduce his sentence is denied.

IT IS ORDERED that the Defendant's motion to reduce his sentence as a result of the recent amendments to the crack cocaine sentencing guidelines (Filing No. 685) is denied.

DATED this 1<sup>st</sup> day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge